

IN THE HIGH COURT OF JHARKHAND AT RANCHI

I.A. No. 463 of 2012

In

Cr. Appeal (DB) No. 656 of 2007

1. Upendra Ram

2. Satyendra Ram

..... Appellants

Versus

The State of Jharkhand

..... Respondent

**CORAM: HON'BLE MR. JUSTICE D.N. PATEL
HON'BLE MR. JUSTICE R.R. PRASAD**

For Appellant No. 1 : Mr. Jay Shankar Tripathi, Advocate

For the Respondent : A.P.P.

04/Dated: 20th December, 2012

Per D.N. Patel, J.:

1. Present interlocutory application has been preferred by appellant no. 1, namely, Upendra Ram for suspension of sentence awarded to him by the learned trial court, mainly for the offence punishable under Section 302 to be read with Section 34 of the Indian Penal Code.

2. We have heard learned counsel for both the sides and looking to the evidences on record, it appears that there is, *prima facie*, a case against appellant no. 1-accused. As the criminal appeal is pending, we are not much analyzing the evidences on record, but, suffice it to say that:

(i) The case of the prosecution is based upon eye witnesses, who are P.W.1 and P.W.2. Looking to the depositions of these two eye witnesses, it appears that they have clearly narrated the role played by appellant no. 1 and it is alleged that weapons have been used by him in causing murder of the deceased. The deposition given by these two eye witnesses is also getting enough corroboration by the evidence given by P.W.7-Dr. Abhay Kumar and these evidences constitute a *prima facie* case against appellant no. 1.

(ii) Previously also, twice the prayer for suspension of sentence of the very same appellant was rejected by this Court vide order dated 20th June, 2007 and 10th February, 2010 respectively. There is no change in the circumstance after previous rejection of the prayer for suspension of sentence.

(iii) Learned counsel for the appellant no. 1 submitted that there is discrepancy between ocular evidence and medical evidence. This contention is not accepted by this Court, on the contrary, looking to the

medical evidence given by Dr. Abhay Kumar, it appears that there is enough corroboration to the deposition given by the eye witnesses. As the criminal appeal is pending, we are not analyzing, in detail, that how there is corroboration, but, suffice it to say that when skin is nearer to bone, the injury appears to have been caused by the hard and blunt substance, but, it can also be caused by sharp cutting instrument and nature of injury is similar. Because of these aspects of the matter, we are not inclined to accept the argument, canvassed by learned counsel for appellant no. 1. In the facts of the present case, injury has been caused at the head of the deceased. This constitute a *prima facie* case.

3. In view of the aforesaid evidences and *prima facie* case against present appellant no. 1 and looking to the gravity of offence, quantum of punishment and the manner in which present appellant no. 1 is involved in the offences, as alleged by the prosecution, we are not inclined to suspend the sentence awarded to present appellant no. 1 and, hence, his prayer for suspension of sentence is, hereby, rejected.

4. Accordingly, I.A. No. 463 of 2012 stands disposed of.

(D.N. Patel, J.)

(R.R. Prasad, J.)

Ajay/